

REMARKS/ARGUMENTS

Claims 15, 29 and 30 are pending. In an effort to advance prosecution, claims 1-14, 16-28 and 31-42 are canceled without prejudice or disclaimer of the subject matter they contain and claims 15 and 29 are amended to encompass infringing subject matter. No new matter has been added. By the amendments, Applicant does not acquiesce to the propriety of any of the Examiner's rejections and does not disclaim any subject matter to which Applicant is entitled. *Cf. Warner Jenkinson Co. v. Hilton-Davis Chem. Co.*, 41 U.S.P.Q.2d 1865 (U.S. 1997). Further, Applicant reserves the right to file continuing applications to cover disclosed subject matter not encompassed by the currently pending claims.

ELECTION/RESTRICTIONS

The Office Action states that the species of eugenol and forskolin have been constructively elected by original presentation for prosecution on the merits and as such, claims 20-28 and 34-42 are withdrawn from consideration as being directed to non-elected species. In response, Applicants have cancelled claims 20-28 and 34-42 without prejudice or disclaimer of the subject matter they contain.

INFORMATION DISCLOSURE STATEMENT

The Office Action alleges that the Information Disclosure Statement filed on February 27, 2004, fails in part to comply with 37 C.F.R. § 1.98(a)(2). In response, Applicants' respectfully submit that this rejection is improper because the crossed out references on Applicants' PTO-1449 form have been located in PAIR or were cited in a prior counterpart application by the Patent Office, i.e., such non-considered references are readily accessible to the

Patent Office. With respect to the French language patent, Applicants respectfully submit that an English-language PCT Search Report, which explained the relevance of this patent, was previously submitted in a counterpart patent application. With respect to the German patent, Applicants have moved the citation for this reference to the "Foreign Patent Documents" section in the attached clean PTO-1449 Form, as requested in the Office Action. Nevertheless, solely in an effort to advance prosecution, Applicants submit courtesy copies of the non-considered references and a copy of the PCT Search Report. Acknowledgement of consideration of all references cited on the attached clean PTO-1449 form is respectfully requested.

DRAWINGS

The Office Action objects to Figures for lacking clarity. In response, Applicants submit replacement sheets. Reconsideration and withdrawal of this objection are respectfully requested.

REJECTION UNDER 35 U.S.C. § 112

The Office Action rejects claims 15-19 and 29-33 under 35 U.S.C. § 112, first paragraph. The Office Action alleges that while the specification is enabling for a method for treating breast cancer with eugenol and forskolin, enablement is not present for any cancer and any plant essential oil. Although Applicants respectfully traverse this rejection, in response, and solely in an effort to advance prosecution without acquiescing to its propriety, Applicants have amended the claims to be directed to methods using a composition comprising eugenol and forskolin. Reconsideration and withdrawal of this rejection are respectfully requested.

CONCLUSION

If anything further could be done to place the above-captioned patent application in better condition for allowance (i.e., via Examiner's Amendment), then please contact the undersigned attorney at the telephone number listed below.

Please grant any extension(s) of time deemed necessary for entry of this communication. The Commissioner is hereby authorized to charge any deficiency in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper filed hereafter) to Deposit Account No. **14-1140**. Please credit any overpayment of fees to such Deposit Account.

Respectfully submitted,

NIXON & VANDERHYE P.C.

Date: June 22, 2005

By: 

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